

DRAFT - 9/8/84

THIS AGREEMENT, dated as of September , 1984,
by and between PHILIP MORRIS U.S.A., a division of Philip
Morris Incorporated, a Virginia corporation, with
principal executive offices at 120 Park Avenue, New York,
New York 10017 ("PM"), and 'ROUND THE HORN, INC., a New
York corporation with offices at
("RTH"),

W I T N E S S E T H:

WHEREAS RTH has developed and brought to PM an
original proposal for conducting an open-ocean, non-stop
sailboat race from New York City to San Francisco around
Cape Horn (the "Race"), with the objective of breaking the

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existing anchor to anchor record of eighty-nine days, eight hours established in 1854 by the clipper ship "Flying Cloud", and has represented that it has the know-how and ability to operate, supervise, and promote the Race, and

WHEREAS PM, a manufacturer and seller of cigarettes and, through subsidiaries of Philip Morris Incorporated, other consumer products, desires to sponsor the Race in order to promote and foster the development of boat racing and for the commercial identification of its MERIT cigarette brand as provided for herein,

NOW, THEREFORE, in consideration of the premises and the terms and conditions set forth herein, the parties hereto agree as follows:

1. PM agrees to sponsor the Race on the terms and conditions set out herein. There shall be a maximum of twenty entrants. Unless PM agrees otherwise, the Race shall be non-stop, anchor to anchor, and, in any event, based on elapsed time. I.e., if stops are required by

safety considerations, the Race Rules (as defined in paragraph 6) or otherwise, the clock will not stop. Unless PM agrees otherwise, the Race will begin at the South Street Seaport in New York City on or about April 7, 1985 and proceed via Cape Horn to the Golden Gate Bridge in San Francisco Bay. The "great circle" distance to be covered is approximately 13,300 nautical miles.

2. The official name of the Race shall be "The Merit Challenge - Race Around the Horn" or such other name as is approved by PM, which name or an approved variant RTH shall use only in accordance with the provisions of this agreement. The name or approved variant shall be the exclusive name by which the Race is identified.

3. Unless PM agrees otherwise, the aggregate prize money PM will provide shall be a maximum of \$250,000, with \$50,000 to be paid to the winner of the Race, if the winner beats the existing record, and an additional amount to be paid to each of the winner and any other entrant that beats the existing record, such amount

to be \$1,000 for each day by which the record is beaten, up to a maximum of \$10,000 per entrant. If the existing record is not broken, no prize money will be awarded. In any event, PM may award trophies, medals or other commemorative items in its discretion.

4. RTH shall be responsible for providing all services necessary to the successful conduct and promotion of the Race in a first-class manner. The Race shall be conducted in accordance with this agreement and the highest standards prevailing for open-ocean races. The services of RTH shall include, without limitation:

(a) planning, soliciting entrants for, operating, organizing, supervising and conducting the Race in accordance with this agreement and the Race Rules;

(b) selecting and retaining the services of a reputable and nationally recognized yachting organization (the "Expert Association") to consult with and assist in connection with the

Race, such Expert Association's role to include, without limitation, review of the Race Rules and ruling on issues arising during the Race as provided herein, development of racing certification standards, certification of entrants and approval of their crews. The identity of the Expert Association shall be subject to PM's prior approval and RTH shall enter into an agreement with the Expert Association providing for its services hereunder, which agreement shall be subject to PM's prior review and approval;

(c) making arrangements for satellite transmission during the Race, press coverage, Command Posts, arrangements at the start and finish of the Race, and related administrative and facilitating duties, all as provided herein;

(d) if requested by PM, organizing a "Race Committee" to consist of representatives of PM, RTH, the Expert Association, and other persons

associated with boat racing and approved by PM,
for promotional purposes in connection with the
Race; and

(e) providing such promotional and other
assistance as PM may request in connection with
the Race.

5. Without limiting the generality of the
preceding paragraph, RTH shall as promptly as possible
after execution of this agreement (i) retain the Expert
Association in accordance with paragraph 4(b) and (ii)
prepare and submit to PM and the Expert Association a
draft of proposed rules regulating, in accordance with the
terms of this agreement, all aspects of the Race,
including, without limitation, entry and qualification
requirements, safety, radio, and weather-related
regulations, commercial identification, prize money
distribution and award presentation. RTH shall obtain the
input of the Expert Association on entry and qualification
requirements, safety, radio and weather-related
regulations and similar technical matters ("Expert

Association Matters"). RTH shall obtain the input of PM on matters relating to the basic structure of the Race, prize money and award distribution, commercial identification and similar commercial matters ("PM Matters"). RTH shall be responsible for communication with the Expert Association and PM on all appropriate aspects of the draft rules and for resolving disputes; provided that PM shall have the right of prior approval as to all PM Matters and as to whether a given matter is a PM Matter.

6. After receipt of PM's and the Expert Association's input, RTH shall revise the draft rules, incorporating necessary or appropriate changes, and the rules in the form finally agreed shall be dated and initialed by RTH, PM and the Expert Association and shall thereupon constitute the "Race Rules" referred to herein. RTH shall be responsible for administration of the Rules and shall report promptly to PM in writing any deviation from any of the Race Rules and, if the deviation affects an Expert Association Matter, shall also report it to the Expert Association. RTH shall, upon written request from

the Expert Association or PM or on its own initiative, bring to the attention of all parties any situation arising after the Race Rules have been approved as provided above where a change in the Rules may be advisable or necessary. RTH shall be responsible for determining in the first instance whether such change should be effected, for securing necessary approvals from the Expert Association or PM or both, as the case may be, and for communicating any agreed changes to the parties hereto, the entrants and to all other interested parties. The Race Rules shall contain provisions permitting such changes.

7. The Race Rules shall provide that with respect to each boat certified for entry in the Race the appropriate parties shall enter into a contract with RTH providing for such commercial identification and promotional cooperation as PM shall require and specifically defining the entrant's right (and the rights of its crew) to use materials bearing PM's trademarks or using the MERIT name. It is understood that individual boats entered in the Race may be commercially sponsored at

~~the time of their application for entry.~~ The Race Rules shall contain provisions permitting such sponsorship, provided that the sponsor is not a manufacturer or distributor of cigarettes, beer or soft drinks, and provided further that the contract with respect to each such entrant will require that PM's commercial identification be protected in all events and that, in particular, but without limitation, the corporate sponsor shall be required to refer to the Race only by its official name in all of the promotional or advertising material of the sponsor mentioning its sponsorship and to comply with the requirements applicable to official suppliers set out in paragraph 10.

8. As full compensation hereunder, but subject to paragraph 24 regarding refund and termination, PM shall make the following payments to RTH:

(a) one hundred thousand dollars (\$100,000), receipt of which is hereby acknowledged, upon execution of this agreement; and

(b) eight thousand dollars (\$8,000) per month for each of the twelve months commencing on September 1, 1984, for a total of ninety-six thousand dollars (\$96,000).

RTH shall also be entitled to reimbursement, upon submission of supporting documentation, of reasonable out-of-pocket expenses, including reasonable travel and living expenses, incurred by it and its employees in the performance of their services hereunder, including, without limitation, if not paid directly by PM, the fees and expenses of the Expert Association, the expenses of the ceremonies referred to in paragraph 11, the costs of the satellite transmissions referred to in paragraph 9 and the costs of the Command Posts referred to in paragraph 12; provided that no individual expense in excess of two thousand dollars (\$2,000) and no monthly total in excess of four thousand dollars (\$4,000) will be reimbursed unless RTH has obtained PM's prior written approval.

9. RTH shall as promptly as possible after the execution of this agreement establish procedures and enter

into necessary arrangements for audio/video transmission by satellite from each boat entered in the Race to such locations as PM shall designate, and furnish proof to PM's satisfaction that this system is available and operable. No commitments to use such system in connection with the Race shall be made before such proof is submitted to and approved by PM.

10. The commercial identification to be afforded to PM hereunder is of the essence of this agreement. PM shall have exclusive rights to commercial identification in connection with all aspects of the Race, except as specifically set forth herein, and the Race Rules shall so provide. In addition to the possible corporate sponsorship of boats entered in the Race referred to in paragraph 7, PM agrees that subject to its approval RTH may arrange with other companies to be official suppliers to the Race of goods and services necessary or useful in connection with the Race. The identity of and the terms of agreements with such suppliers shall be subject to PM's approval. Without limitation, such agreements shall provide that the suppliers (i) shall be bound not to alter

any materials produced by PM or RTH for the Race, (ii) shall not advertise themselves as sponsors of the Race, and (iii) shall be required to use the official name of the Race and "official supplier" typography or logo in connection with advertising and/or promotion of their status as official suppliers. The official Race name shall be at least one-half the size of the suppliers' names in any advertising and/or promotional materials produced by them.

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11. RTH's obligations to PM hereunder shall include making all necessary arrangements, complying with all applicable laws and securing all necessary permits, consents and authorizations required for the conduct of the Race and related activities as contemplated in this agreement. Without limitation, such activities shall include appropriate ceremonies at the start and finish points of the Race, ~~including fireworks displays,~~ developed in conjunction with PM. PM shall have the right to have its representatives present at the start and finish points of the Race and at any facilities established to monitor the Race and the sole right to make

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presentations at any award ceremonies occurring in connection therewith. Press conferences and other communications with the press before, during and after the Race shall be directed or approved by PM. RTH agrees to cooperate with PM representatives in all regards and to assist PM in press and promotional activities as it requests.

12. RTH shall, if requested by PM, lease facilities for two "command posts" in New York and San Francisco ("Command Posts") to monitor the progress of the Race and to promote PM's sponsorship thereof. PM shall be responsible for designing, installing equipment (except for communications equipment) in and decorating the Command Posts. Any leases, licenses, permits or similar documents RTH is required to obtain in connection with the Command Posts must be submitted to PM for written approval prior to their execution of acceptance.

13. RTH shall further take all steps necessary to permit PM to display promotional materials at, and to distribute complimentary samples of tobacco products and

other consumer products manufactured by any subsidiary or division of Philip Morris Incorporated in and around, areas where activities related to the Race are being conducted, for example, in the vicinity of the Command Posts and the start and finish points of the Race.

14. PM shall supply, or shall have the right of prior written approval of, all materials bearing the name of the Race, including, without limitation, tickets, programs and promotional materials (including advertising and press releases), and the manner of their use. No materials furnished by PM shall be changed without its consent. Promotional materials supplied to RTH shall be used only for matters relating directly to the Race. RTH shall give PM at least two weeks' time to review and approve any such materials not furnished by PM and shall require any official suppliers to do the same.

15. Without limiting paragraph 16, it is understood that PM is the sole owner of its trademarks, including, without limitation, the MERIT name, logotype, designs, emblems, slogans and insignia, and the name of

the Race and any logotypes and designs developed for the Race, and all other materials produced by or for it bearing the name of or otherwise connected with the Race. RTH is entitled to use the name of the Race, any other PM trademarks and any other material produced by or for PM only in accordance with the specific terms of this agreement or otherwise with PM's prior written consent. It is understood that PM intends to make written, filmed, video or other descriptions, representations or reproductions of the Race, including all parts thereof and entrants (boats and crews) therein for PM's own promotional or other purposes. The contracts with individual entrants referred to in paragraph 7 above shall require that a designated crew member of each entrant shall, if requested, make daily photographs, ~~or~~ motion pictures during the Race, which photographs ~~for~~ motion pictures shall be made with cameras and film supplied ~~by~~ ^{video tape and/or} ^{or approved} PM, and the negatives shall be promptly turned over to PM at the conclusion of the Race. Notwithstanding the foregoing, PM hereby specifically waives any United States broadcast rights to the Race and, as between it and RTH, agrees that such rights shall belong solely to RTH.

16. RTH recognizes and acknowledges that the MERIT name and the designs, emblems, slogans and insignia of the MERIT brand have great value and good will and are the sole property of PM, and RTH agrees that it has and will claim no right, title or interest in the same or the use thereof except the right to use them subject to the terms and conditions of this agreement. RTH agrees that, in the event of a breach of this agreement by it, the threatened injury to the MERIT name, logotype, designs, emblems, slogans or insignia and the good will therein would be irreparable and injunctive or other equitable relief to protect the same would be appropriate (without limitation as to monetary damages or other remedies that might be available to PM at law).

17. The Race Rules shall provide that all entrants in the Race specifically release PM, RTH and the Expert Association from all liability and indemnify them in connection with the Race and permit the unrestricted use of the names, likenesses, and biographies of the entrants (boats, owners and crews) in any publicity in

connection with the Race or any descriptions, representations or reproductions provided for in paragraph 15.

18. RTH shall be responsible for obtaining all releases, clearances and similar documents necessary for any descriptions, representations or reproductions as contemplated in paragraph 15 and shall not agree to accept any proposed restrictions, limitations or fees attempted to be imposed by any parties from whom releases or clearances are sought without advising PM and obtaining its specific approval. RTH shall specifically assure that no restrictions, limitations or additional fees would be incurred in the future by reason of any use of material so obtained and shall promptly advise PM of any variance from this assurance and shall not agree to such variance without PM's written approval.

19. RTH agrees to comply with all applicable international, national, federal, state and local laws, regulations, ordinances and standards (whether of the United States or any other nation) affecting the conduct

of the Race or any of the activities of RTH hereunder and shall see that the Race Rules similarly require such compliance by entrants in the Race, with particular reference to adequate safety measures and compliance with applicable regulations of the United States Coast Guard or similar agencies of other countries. Without limiting the generality of the foregoing, RTH acknowledges that it is cognizant of the provisions of Title 15, Section 1331 et. seq. of the United States Code concerning radio, television and other electronic communications media subject to the jurisdiction of the Federal Communications Commission.

20. RTH represents and warrants (i) that the concept of the Race as developed by it, including, without limitation, all materials related thereto, is wholly original with RTH and does not violate, conflict with or infringe upon any rights whatsoever of any other person, firm or corporation and (ii) that RTH has the right to enter into this agreement and the full right, authority and power to grant the rights granted by it herein and to assume and perform all its obligations under this agreement.

21. RTH shall obtain and pay for general liability insurance with a limit of \$ _____ covering its activities hereunder with a carrier acceptable to PM. The Race Rules shall require all entrants to obtain satisfactory general liability and other coverage in appropriate amounts. Prior to the start of the Race, RTH shall provide PM with certificates of insurance showing PM as a named insured under all such policies and providing that such insurance is not cancellable except upon thirty (30) days' written notice to PM.

22. RTH shall save and hold PM harmless from and against any and all claims, expenses, demands, suits or judgments arising from or relating to the obligations of RTH under this agreement or its activities in connection with the Race. PM shall save and hold RTH harmless from and against any and all claims, expenses, demands, suits or judgments arising from or relating to action taken by PM under this agreement. Each party shall notify the other of any claim or lawsuit covered by this paragraph that comes to its attention. PM shall be given the

opportunity to participate, at its own cost, in the defense of any claim or law suit covered by this paragraph or may, at its option, take over and control the defense of any such claim or lawsuit but may not, in the latter case, settle such claim or lawsuit without the consent of RTH.

23. Force majeure, acts of God, or other causes beyond the control of either party necessitating the cancellation of the Race or any event related thereto, including, without limitation, the enactment of legislation or other governmental or regulatory action that, in the reasonable business judgment of PM, materially affects the value of its sponsorship of the Race, shall not subject either RTH or PM to any liability to the other.

24. PM may terminate this agreement, effective immediately on written notice, if any of the following occur:

(a) the Expert Association has not been selected and retained by October 1, 1984;

(b) the Race Rules have not been agreed on in final form by November 1, 1984;

(c) satisfactory proof of the capability of the audio/video transmission system referred to in paragraph 9 has not been furnished by November 1, 1984;

(d) leases have not been executed for, and other satisfactory arrangements have not been made for the operation of, the Command Posts by December 3, 1984;

(e) at least ten (10) boats have not been registered for the Race and certified in compliance with the Race Rules by December 15, 1984;

(f) a change in applicable law prohibits or materially adversely affects the sponsorship by a manufacturer and seller of cigarettes of a promotion such as the Race;

(g) RTH commits a material breach of this agreement;

(h) Raymond Bentley leaves the employ of or is no longer available to perform his usual services for RTH;

(i) RTH files a petition for bankruptcy, reorganization or similar relief under state or federal law or otherwise proves to be financially unable to carry on its obligations under this agreement; or

(j) PM determines, in its sole discretion, not to conduct the Race or that RTH is otherwise unable to perform its obligations hereunder.

Upon any termination, PM shall have no obligation to make any further monthly payments provided for in paragraph 8(b) above, except that in the case of a termination pursuant to subparagraph (j), RTH shall also be entitled to reimbursement of reasonable expenses incurred prior to termination and not otherwise reimbursed. (If applicable in any case, the last month's payment shall be prorated.) In the case of a termination pursuant to subparagraph (j), RTH may retain the one hundred thousand dollar (\$100,000) payment made pursuant to paragraph 8(a); in any other case, RTH shall be obligated promptly to reimburse PM for such amount.

25. It is understood that PM's payments hereunder to RTH are in part payment for the exclusive sponsorship of the Race and the concept of the Race as developed by RTH. RTH shall not operate, supervise or promote a boat race on behalf of any other manufacturer or seller of cigarettes, beer or soft drinks for a period of at least three years after any termination of this agreement or after the conclusion of the Race.

26. If PM decides to sponsor an event similar to the Race in the twelve months following the Race, PM shall have the option (but not the obligation) to enter into an agreement with RTH to perform services similar to those provided for hereunder in connection with such Race in return for a payment of ten thousand dollars (\$10,000) per month for the number of months necessary (which may be more or less than twelve months, depending on the facts at such time) and reimbursement of expenses as provided in paragraph 8. The rights of RTH in any case where PM does not opt to use its services are limited to its rights to receive money as set forth in this agreement, and, without limitation, PM shall be free to use other promoters in the future for boat races. If RTH is not supervising the Race because of a termination pursuant to any of subparagraphs 18(g), (h), (i), or (j) above, it is understood that PM is free to retain another promoter to perform the services required of RTH hereunder or to perform such services itself.

27. RTH is and shall at all times remain an independent contractor. Nothing contained herein shall be

construed to make RTH an agent or employee of PM or to make them joint venturers. RTH shall have no authority to enter into contracts on behalf of PM.

28. This agreement may not be assigned by either party without the prior written consent of the other.

29. Any notice from one party to the other relating to this agreement shall be deemed duly given if delivered by hand or sent by United States certified mail, return receipt requested, postage fully prepaid, to the respective addresses set out at the beginning of this agreement, if to PM to the attention of its MERIT Brand Manager, and if to RTH to the attention of _____, or to such other address or addresses or such other party or parties as may have been designated by notice duly given hereunder. RTH shall notify PM as promptly as possible of the address for notices to the Expert Association.

30. This agreement is the complete agreement between the parties, supersedes any prior or written

agreements, and may not be amended except by a writing signed by both parties.

31. This agreement shall be governed by the laws of the State of New York applicable to agreements made and to be performed entirely within such state.

32. A waiver by RTH or PM of any of the terms and conditions of this agreement in any one or more instances shall not be deemed or construed to be a general waiver or a waiver of any other term or condition or a waiver of any subsequent breach.

IN WITNESS WHEREOF the parties hereto have duly executed this agreement as of the date first written above.

PHILIP MORRIS U.S.A.

'ROUND THE HORN, INC.

By _____

By _____